

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JERAMEY R. BROWN,

Plaintiff,

v.

Case No. 07-cv-370-JPG

JOE GULASH, *et al.*,

Defendants.

MEMORANDUM AND ORDER

This matter comes before the Court on the motion of defendants Unknown Party Travis and Unknown Party Maintenance Man to dismiss plaintiff Jeramey R. Brown's claim (Count 5) against them for failure to serve process (Doc. 199). Brown filed the complaint in this case on May 21, 2007, but as of July 1, 2010, he had not served these two defendants. Brown has not responded to the motion to dismiss.

The Court's analysis necessarily starts with Federal Rule of Civil Procedure 4(m), which governs the time in which process must be served. That rule provides, in pertinent part:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. . . .

Fed. R. Civ. P. 4(m). This rule requires a court to grant an extension if the plaintiff shows good cause, but leaves it to the court's discretion whether to grant an extension if the plaintiff shows excusable neglect. *Coleman v. Milwaukee Bd. of Sch. Directors*, 290 F.3d 932, 934 (7th Cir. 2002); *Panaras v. Liquid Carbonic Indus. Corp.*, 94 F.3d 338, 340-41 (7th Cir. 1996).

Brown has shown neither good cause nor excusable neglect. Furthermore, he has had sufficient time to identify these unknown defendants via discovery, but he has failed to do so.

The Court believes that in light of Brown's failure to diligently pursue claims against these defendants, they should be dismissed from this case without prejudice.

Therefore, the Court **GRANTS** the motion to dismiss (Doc. 199), **DISMISSES** Brown's claim (Count 5) against Unknown Party Travis and Unknown Party Maintenance Man **without prejudice** pursuant to Rule 4(m) and **DIRECTS** the Clerk of Court to enter judgment accordingly at the close of the case. Unknown Party Travis and Unknown Party Maintenance Man are terminated from this case.

IT IS SO ORDERED.

DATED: September 15, 2010

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE